

HOUSE SUBSTITUTE
FOR
HOUSE BILL NO. 1602
AN ACT

2 To repeal sections 444.762, 444.765, 444.767,
3 444.770, and 444.787, RSMo, and to enact in
4 lieu thereof five new sections relating to
5 environmental regulation, with penalty
6 provisions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

9 Section A. Sections 444.762, 444.765, 444.767, 444.770, and
10 444.787, RSMo, are repealed and five new sections enacted in lieu
11 thereof, to be known as sections 444.762, 444.765, 444.767,
12 444.770, and 444.787, to read as follows:

13 444.762. It is hereby declared to be the policy of this
14 state to strike a balance between surface mining of minerals and
15 reclamation of land subjected to surface disturbance by surface
16 mining, as contemporaneously as possible, and for the
17 conservation of land, and thereby to preserve natural resources,
18 to encourage the planting of forests, to advance the seeding of
19 grasses and legumes for grazing purposes and crops for harvest,
20 to aid in the protection of wildlife and aquatic resources, to
21 establish recreational, home and industrial sites, to protect and
22 perpetuate the taxable value of property, and to protect and
23 promote the health, safety and general welfare of the people of

1 this state. Nothing in this policy shall be construed to declare
2 the purpose of the Land Reclamation Act as regulation of the
3 excavation of minerals or fill dirt for the purpose of
4 construction of recreational, home, commercial, and industrial
5 facilities at the site of the excavation, as unrelated to surface
6 mining or reclamation of land subsequent to the surface mining of
7 minerals.

8 444.765. Wherever used or referred to in sections 444.760
9 to 444.790, unless a different meaning clearly appears from the
10 context, the following terms mean:

11 (1) "Affected land", the pit area or area from which
12 overburden shall have been removed, or upon which overburden has
13 been deposited after September 28, 1971. When mining is
14 conducted underground, affected land means any excavation or
15 removal of overburden required to create access to mine openings,
16 except that areas of disturbance encompassed by the actual
17 underground openings for air shafts, portals, adits and haul
18 roads in addition to disturbances within fifty feet of any
19 openings for haul roads, portals or adits shall not be considered
20 affected land. Sites which exceed the excluded areas by more
21 than one acre for underground mining operations shall obtain a
22 permit for the total extent of affected lands with no exclusions
23 as required under sections 444.760 to 444.790;

24 (2) "Beneficiation", the dressing or processing of minerals
25 for the purpose of regulating the size of the desired product,

1 removing unwanted constituents, and improving the quality or
2 purity of a desired product;

3 (3) "Commercial purpose", the purpose of extracting
4 minerals for their value in sales to other persons or for
5 incorporation into a product;

6 (4) "Commission", the land reclamation commission in the
7 department of natural resources;

8 (5) "Construction", construction, erection, alteration,
9 maintenance, or repair of any facility including but not limited
10 to any building, structure, highway, road, bridge, viaduct, water
11 or sewer line, pipeline or utility line, and demolition,
12 excavation, land clearance, and moving of minerals or fill dirt
13 in connection therewith;

14 [(3)] (6) "Director", the staff director of the land
15 reclamation commission;

16 (7) "Excavation", any operation in which earth, minerals,
17 or other material in or on the ground is moved, removed, or
18 otherwise displaced for purposes of construction at the site of
19 excavation, by means of any tools, equipment, or explosives and
20 includes, but is not limited to, backfilling, grading, trenching,
21 digging, ditching, drilling, well-drilling, auguring, boring,
22 tunneling, scraping, cable or pipe plowing, plowing-in, pulling-
23 in, ripping, driving, demolition of structures, and the use of
24 high-velocity air to disintegrate and suction to remove earth and
25 other materials;

1 (8) "Fill dirt", material removed from its natural location
2 through mining or construction activity, which is a mixture of
3 unconsolidated earthy material, which may include some minerals,
4 and which is used to fill, raise, or level the surface of the
5 ground at the site of disposition, which may be at the site it
6 was removed or on other property, and which is not processed to
7 extract mineral components of the mixture. Backfill material for
8 use in completing reclamation is not included in this definition;

9 (9) "Land improvement", work performed by or for a public
10 or private owner or leasor of real property for purposes of
11 improving the suitability of the property for construction at an
12 undetermined future date, where specific plans for construction
13 do not currently exist;

14 [(4)] (10) "Mineral", a constituent of the earth in a solid
15 state which, when extracted from the earth, is usable in its
16 natural form or is capable of conversion into a usable form as a
17 chemical, an energy source, or raw material for manufacturing or
18 construction material. For the purposes of this section, this
19 definition includes barite, tar sands, and oil shales, but does
20 not include iron, lead, zinc, gold, silver, coal, surface or
21 subsurface water, fill dirt, natural oil or gas together with
22 other chemicals recovered therewith;

23 (11) "Mining", the removal of overburden and extraction of
24 underlying minerals or the extraction of minerals from exposed
25 natural deposits for a commercial purpose, as defined by this

1 section;

2 [(5)] (12) "Operator", any person, firm or corporation
3 engaged in and controlling a surface mining operation;

4 [(6)] (13) "Overburden", all of the earth and other
5 materials which lie above natural deposits of minerals; and also
6 means such earth and other materials disturbed from their natural
7 state in the process of surface mining other than what is defined
8 in subdivision [(4)] (10) of this section;

9 [(7)] (14) "Peak", a projecting point of overburden created
10 in the surface mining process;

11 [(8)] (15) "Pit", the place where minerals are being or
12 have been mined by surface mining;

13 (16) "Public entity", the state of Missouri or any officer,
14 official, authority, board, or commission of the state and any
15 county, city, or other political subdivision thereof, or any
16 institution supported in whole or in part by public funds;

17 (17) "Quarry", any open pit or land disturbance whose
18 primary business purpose is the commercial surface mining of
19 minerals for purposes of being processed and sold to public
20 entities or private persons. A quarry operation includes, but is
21 not limited to, blasting, mining, screening, sorting, crushing,
22 milling, stockpiling, and weight scales or other means of
23 measuring the quantity of minerals sold;

24 [(9)] (18) "Refuse", all waste material directly connected
25 with the cleaning and preparation of substance mined by surface

mining;

[(10)] (19) "Ridge", a lengthened elevation of overburden created in the surface mining process;

[(11)] (20) "Site" or "mining site", any location or group of associated locations where minerals are being surface mined by the same operator;

[(12)] (21) "Surface mining", the mining of minerals for commercial purposes by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed, and shall include mining of exposed natural deposits of such minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operations for such minerals. For purposes of the provisions of sections 444.762 to 444.787, surface mining shall not be construed to mean excavations to move minerals or fill dirt within the confines of the real property where the excavation occurs or to remove minerals or fill dirt from the real property in preparation for construction.

444.767. 1. The commission may:

(1) Adopt and promulgate rules and regulations pursuant to section 444.530 and chapter 536, RSMo, respecting the administration of sections 444.760 to 444.790 and in conformity therewith;

(2) Encourage and conduct investigation, research, experiments and demonstrations, and collect and disseminate

1 information relating to strip mining and reclamation and
2 conservation of lands and waters affected by strip mining;

3 (3) Examine and pass on all applications and plans and
4 specifications submitted by the operator for the method of
5 operation and for the reclamation and conservation of the area of
6 land affected by the operation;

7 (4) Make investigations and inspections which are necessary
8 to ensure compliance with the provisions of sections 444.760 to
9 444.790;

10 (5) Conduct hearings pursuant to sections 444.760 to
11 444.790 and may administer oaths or affirmations and subpoena
12 witnesses to the inquiry;

13 (6) Order, after hearing, the revocation of any permit and
14 to cease and desist operations for failure to comply with any of
15 the provisions of sections 444.760 to 444.790 or any corrective
16 order of the commission;

17 (7) Order forfeiture of any bond for failure to comply with
18 any provisions of sections 444.760 to 444.790 or any corrective
19 order of the commission or other order of the commission;

20 (8) Cause to be instituted in any court of competent
21 jurisdiction legal proceedings for injunction or other
22 appropriate relief to enforce the provisions of sections 444.760
23 to 444.790 and any order of the commission promulgated
24 thereunder;

25 (9) Retain, employ, provide for, and compensate, within the

1 limits of appropriations made for that purpose, such consultants,
2 assistants, deputies, clerks, and other employees on a full- or
3 part-time basis as may be necessary to carry out the provisions
4 of sections 444.760 to 444.790 and prescribe the times at which
5 they shall be appointed and their powers and duties;

6 (10) Study and develop plans for the reclamation of lands
7 that have been strip mined prior to September 28, 1971;

8 (11) Accept, receive and administer grants or other funds
9 or gifts from public and private agencies and individuals,
10 including the federal government, for the purpose of carrying out
11 any of the functions of sections 444.760 to 444.790, including
12 the reclamation of lands strip mined prior to August 28, 1990.
13 The commission may promulgate such rules and regulations or enter
14 into such contracts as it may deem necessary for carrying out the
15 provisions of this subdivision;

16 (12) Budget and receive duly appropriated moneys for
17 expenditures to carry out the provisions and purposes of sections
18 444.760 to 444.790;

19 (13) Prepare and file a biennial report with the governor
20 and members of the general assembly;

21 (14) Order, after hearing, an operator to adopt such
22 corrective measures as are necessary to comply with the
23 provisions of sections 444.760 to 444.790.

24 2. The commission shall have no authority under the
25 provisions of sections 444.762 to 444.787 to regulate the

1 excavation of minerals or fill dirt for the purposes of
2 construction at the site of excavation, as unrelated to
3 reclamation of land subsequent to the surface mining of minerals.

4 3. The commission shall have no authority to regulate
5 commerce in the sale of minerals or to implement or enforce
6 regulations or policies for the purpose of protecting or
7 establishing markets for one or more operators of surface mining
8 operations.

9 4. The powers authorized by this section shall be utilized
10 to promote the reclamation of land subjected to disturbance by
11 surface mining for purposes of restoration of land for
12 recreational, residential, commercial, industrial, or other
13 beneficial use subsequent to mining and to promote and protect
14 the health, safety, and general welfare of the people of this
15 state in relation to surface mining.

16 444.770. 1. It shall be unlawful for any operator to
17 engage in surface mining without first obtaining from the
18 commission a permit to do so, in such form as is hereinafter
19 provided, including any operator involved in any gravel mining
20 operation where the annual tonnage of gravel mined by such
21 operator is less than five thousand tons.

22 2. Sections 444.760 to 444.790 shall apply only to those
23 areas which are opened on or after January 1, 1972, or to the
24 extended portion of affected areas extended after that date. The
25 effective date of this section for minerals not previously

1 covered under the provisions of sections 444.760 to 444.790 shall
2 be August 28, 1990.

3 3. All surface mining operations where land is affected
4 after September 28, 1971, which are under the control of any
5 government agency whose regulations are equal to or greater than
6 those imposed by section 444.774, are not subject to the further
7 provisions of sections 444.760 to 444.790, except that such
8 operations shall be registered with the land reclamation
9 commission.

10 4. Any portion of a surface mining operation which is
11 subject to the provisions of sections 260.200 to 260.245, RSMo,
12 and the regulations promulgated thereunder, shall not be subject
13 to the provisions of sections 444.760 to 444.790, and any bonds
14 or portions thereof applicable to such operations shall be
15 promptly released by the commission, and the associated permits
16 canceled by the commission upon presentation to it of
17 satisfactory evidence that the operator has received a permit
18 pursuant to section 260.205, RSMo, and the regulations
19 promulgated thereunder. Any land reclamation bond associated
20 with such released permits shall be retained by the commission
21 until presentation to the commission of satisfactory evidence
22 that:

23 (1) The operator has complied with sections 260.226 and
24 260.227, RSMo, and the regulations promulgated thereunder,
25 pertaining to closure and postclosure plans and financial

1 assurance instruments; and

2 (2) The operator has commenced operation of the solid waste
3 disposal area or sanitary landfill as those terms are defined in
4 chapter 260, RSMo.

5 5. Notwithstanding the provisions of subsection 1 of this
6 section, any political subdivision which uses its own personnel
7 and equipment or any private individual for personal use may
8 conduct in-stream gravel operations without obtaining from the
9 commission a permit to conduct such an activity.

10 6. Notwithstanding any commission rule, policy, or
11 interpretation to the contrary, no public entity, private person,
12 or contractor or subcontractor to such public entity or private
13 person shall be required to obtain a permit under this section
14 for the purpose of moving minerals or fill dirt within the
15 confines of real property where excavation occurs or to remove
16 minerals or fill dirt from the real property as incidental to the
17 primary purpose of construction at the site of excavation. It
18 shall be a rebuttable presumption that excavations are for the
19 purposes of construction if:

20 (1) Excavation, moving, or removing of minerals or fill
21 dirt is performed by the public entity, private person, or a
22 contractor to such public entity or private person or by a
23 subcontractor, pursuant to engineering plans and specifications
24 for construction on the real property, which were prepared by an
25 architect, professional engineer, or landscape architect licensed

1 pursuant to chapter 327, RSMo; or

2 (2) There is a written contract between a contractor and a
3 public entity or private person or between a contractor and
4 subcontractor requiring excavation, which establishes dates for
5 completion of the work or portions of the work, which specifies
6 the terms of payment for work, and requires the excavation,
7 moving, or removing of minerals or fill dirt for purposes of
8 construction.

9 7. It shall be a rebuttable presumption that excavations
10 purported to be for the purposes of construction are surface
11 mining if minerals removed from the site are in quantities
12 greater than required to perform on engineering plans or
13 specifications or to comply with work required by a written
14 contract. Any private person, leasor, public entity, contractor,
15 or subcontractor engaged in land improvement involving the
16 displacement, moving, or removal of minerals and fill dirt may or
17 may not be required to obtain a surface mining permit pursuant to
18 a determination by the commission as to whether activity on the
19 real property constitutes surface mining.

20 (1) It shall be a rebuttable presumption that land
21 improvement activities are for the purpose of mining if:

22 (a) The real property has been designated as a surface mine
23 by the federal Mine Safety and Health Administration; or

24 (b) Minerals from the property are sold to other persons on
25 a frequent or ongoing basis as demonstrated by financial records

1 of the property owner or purchasers of minerals; or

2 (c) A pit, peak, or ridge as defined in land reclamation
3 laws persists at the property without the property being leveled
4 or filled as consistent with plans, drawings, or maps for land
5 improvement and which endangers the health, safety, or welfare of
6 the general public or constitutes a public nuisance;

7 (2) It shall be a rebuttable presumption that land
8 improvement activities are not for the purposes of mining and do
9 not require a permit if:

10 (a) Minerals removed from the site are excess minerals that
11 cannot be used on-site for any practical purpose and at no time
12 are subject to crushing, screening, or other means of
13 beneficiation with the exception of removal of tree limbs and
14 stumps; and

15 (b) The real property has been approved by a county, city,
16 or other recognized planning and zoning authority for designated
17 use other than as a quarry or surface mine; or

18 (c) Surety bonds or other financial assurances have been
19 provided by the owner of the property as required by a city or
20 county for purposes other than mining; or

21 (d) Performance or payment bonds have been provided by a
22 contractor as required by a public entity pursuant to section
23 107.170, RSMo; or

24 (e) The land improvement is for the purpose of preparing
25 the real property for tilling of the soil and planting of crops

1 or other agricultural purposes;

2 (3) The commission shall promulgate rules further defining
3 when land improvement requires or does not require a surface
4 mining permit. Any rule or portion of a rule, as that term is
5 defined in section 536.010, RSMo, that is created under the
6 authority delegated in this section shall become effective only
7 if it complies with and is subject to all of the provisions of
8 chapter 536, RSMo, and, if applicable, section 536.028, RSMo.
9 This section and chapter 536, RSMo, are nonseverable and if any
10 of the powers vested with the general assembly pursuant to
11 chapter 536, RSMo, to review, to delay the effective date, or to
12 disapprove and annul a rule are subsequently held
13 unconstitutional, then the grant of rulemaking authority and any
14 rule proposed or adopted after August 28, 2004, shall be invalid
15 and void.

16 9. If the director or staff determines that a surface
17 mining permit is required for real property which is purported to
18 be for purposes of construction or land improvement not requiring
19 a surface mining permit pursuant to this section, such
20 determination shall be communicated to the owner of the property
21 by letter stating the reasons for such determination. Upon
22 request of the person receiving the letter, an informal
23 conference shall be scheduled with the director within fifteen
24 calendar days to discuss the determination. Following the
25 informal conference, the director shall issue a written

1 determination regarding his findings of fact no later than
2 fifteen calendar days after the date of the conference. If the
3 director determines that a surface mining permit is required and
4 the person disagrees with that decision, upon written request,
5 the person may request a hearing before the commission at its
6 next regular meeting. The commission shall issue a written
7 determination as to whether a surface mining permit is required
8 under Missouri law within thirty calendar days after the hearing.
9 The written determination may be appealed as provided under this
10 chapter. The burden of proof to establish that a permit is
11 required shall be on the director and the commission.

12 444.787. 1. The commission shall investigate surface
13 mining operations in the state of Missouri. If the
14 investigations show that surface mining is being or is going to
15 be conducted without a permit in violation of sections 444.760 to
16 444.790 or in violation of any revocation order, and the
17 commission has not issued a variance, the commission shall
18 request the attorney general to file suit in the name of the
19 state of Missouri for an injunction and civil penalties not to
20 exceed one thousand dollars per day for each day, or part
21 thereof, the violation has occurred. Suit may be filed either in
22 the county where the violation occurs or in Cole County.

23 2. If the investigation shows that a surface mining
24 operation for which a permit has been issued is being conducted
25 contrary to or in violation of any provision of sections 444.760

1 to 444.790 or any rule or regulation promulgated by the
2 commission or any condition imposed on the permit or any
3 condition of the bond, the director may by conference,
4 conciliation and persuasion endeavor to eliminate the violation.
5 If the violation is not eliminated, the director shall provide to
6 the operator by registered mail a notice describing the nature of
7 the violation, corrective measures to be taken to abate the
8 violation, and the time period for abatement. Within fifteen
9 days of receipt of this notice the operator may request an
10 informal conference with the director to contest the notice. The
11 director may modify, vacate or enforce the notice and shall
12 provide notice to the operator of his action within thirty days
13 of the informal conference. If the operator fails to comply with
14 the notice, as amended by the director, in the time prescribed
15 within the notice, the director shall file a formal complaint
16 with the commission for suspension or revocation of the permit,
17 and for forfeiture of bond, or for appropriate corrective
18 measures. When the director files a formal complaint, the
19 commission shall cause to have issued and served upon the person
20 complained against a written notice together with a copy of the
21 formal complaint, which shall specify the provision of sections
22 444.760 to 444.790 or the rule or regulation or the condition of
23 the permit or of the bond of which the person is alleged to be in
24 violation, a statement of the manner in, and the extent to which,
25 the person is alleged to be in violation. The person complained

1 against may, within fifteen days of receipt of the complaint,
2 request a hearing before the commission. Such hearing shall be
3 conducted in accordance with the provisions of section 444.789.

4 3. After due consideration of the hearing record, or upon
5 failure of the operator to request a hearing by the date
6 specified in the complaint, the commission shall issue and enter
7 such final order and make such final determination as it shall
8 deem appropriate under the circumstances. Included in such order
9 and determination may be the revocation of any permit and to
10 cease and desist operations. The commission shall immediately
11 notify the respondent of its decision in writing by certified
12 mail.

13 4. Any final order or determination or other final action
14 by the commission shall be approved in writing by at least four
15 members of the commission. The commission shall not issue any
16 permit to any person who has had a permit revoked until the
17 violation that caused the revocation is corrected to the
18 satisfaction of the commission. Any final order of the
19 commission can be appealed in accordance with chapter 536, RSMo.

20 5. If the suit filed pursuant to subsection 1 of this
21 section alleges that the violation of operating without a permit
22 constitutes fraud in purporting to be exempted by the provisions
23 of sections 444.762 to 444.787 for construction or land
24 improvement, and the court imposed civil penalties for a
25 violation, additional penalties may be levied at the discretion

1 of the court for up to double the cumulative total of penalties
2 authorized by subsection 1 of this section.